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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,450	10/29/2003	Alex Kunzler	31132.165	5975
46333 7590 07/17/2007 HAYNES AND BOONE, LLP 901 MAIN ST SUITE 3100 DALLAS, TX 75202			EXAMINER SWIGER III, JAMES L	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/696,450	Applicant(s) KUNZLER, ALEX	
	Examiner James L. Swiger	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 21,22,25-30,34 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,23,24,31-33 and 36-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/29/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/30/2007 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31-33 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrison. (US Patent 3,978,862). Morrison disclose a surgical cutting device capable of cutting bone having a guide body (see fig. 5), a bone removal device (44"), a first guide system (37") that has a pin extending therein (see center of 37") that is surrounded by a gear-like device. The second guide system (38") has its own pin that is considered parallel to the axis of the first pin and a third pin (not shown, Fig. 9, center to 81). The first and second guide system are movable connected to one another via the connector rod (36") that keeps the system working simultaneously. Further the first pin

is movable in an orbital path (see fig. 4) that would, via the connection affect the second guide system (to the right) and enable engagement movement of the system.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, 17-18, 20, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. '714 in view of Zarnowski et al. (US Patent 4,892,093). Dietz et al. disclose the claimed invention except for the guide members being substantially aligned along an alignment axis substantially parallel to the axis of the bone removal device. Zarnowski et al. disclose a device wherein a bone removal device (50) can slide and tilt along the guide area created by (34). As the cutting device may slant and angle towards one corner of the guide area, its axis is then substantially aligned with that of the guide device. See Col. 4, lines 9-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Dietz et al. having at least its guide members being substantially aligned along an alignment axis substantially parallel to the axis of the bone removal device in view of Zarnowski et al. to better align the device and cut the bone area

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the

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combination of Dietz et al. (US Patent 5,653,714) and Zarnowski et al. '093 as applied to claim 1 above, and further in view of Michelson (US Patent 6,537,279). The combination of Dietz et al. and Zarnowski et al. disclose the claimed invention except for the bone removal device being coupled to a power source. Michelson discloses a preparation device that is connected to a power source to help drive the device in use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of the combination of Dietz et al. and Zarnowski et al. having at least a power source (Col. 5, lines 1-14) to better use the device.

Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Dietz et al. '714 and Zarnowski et al. '093 as applied to claim 1 above, and further in view of Morrison (US Patent 3,978,862). The combination of Dietz et al. and Zarnowski et al. disclose the claimed invention except for a gear. Morrison discloses a cutting device that has a gear (37) to aid in driving the cutter portion of the bone alignment device (Col. 3, lines 40-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Dietz et al. and Zarnowski et al. having at least a gear in view of Morrison to better operate the device to move the cutter in use.

Response to Arguments

Applicant's arguments with respect to claims 1-20, 23-24, and 31-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JLS

7/9/07



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER